



# ***TOWN OF FISHKILL***

## **OFFICE OF MUNICIPAL DEVELOPMENT**

807 Route 52, Fishkill, New York 12524-3110

website: [www.fishkill-ny.gov](http://www.fishkill-ny.gov)

(845) 831-7800 ext. 3351 Fax: (845) 831-2964

## **Zoning Board of Appeals - Procedures for Filing a Variance Appeal**

For many, appearing before the Fishkill Zoning Board of Appeals is a new and unique experience. The purpose of this handout is to provide information necessary for proceeding with the process. It is recommended that you read the following instructions and contact the Zoning Office at (845)831-7800 ext.3351 should you have any questions.

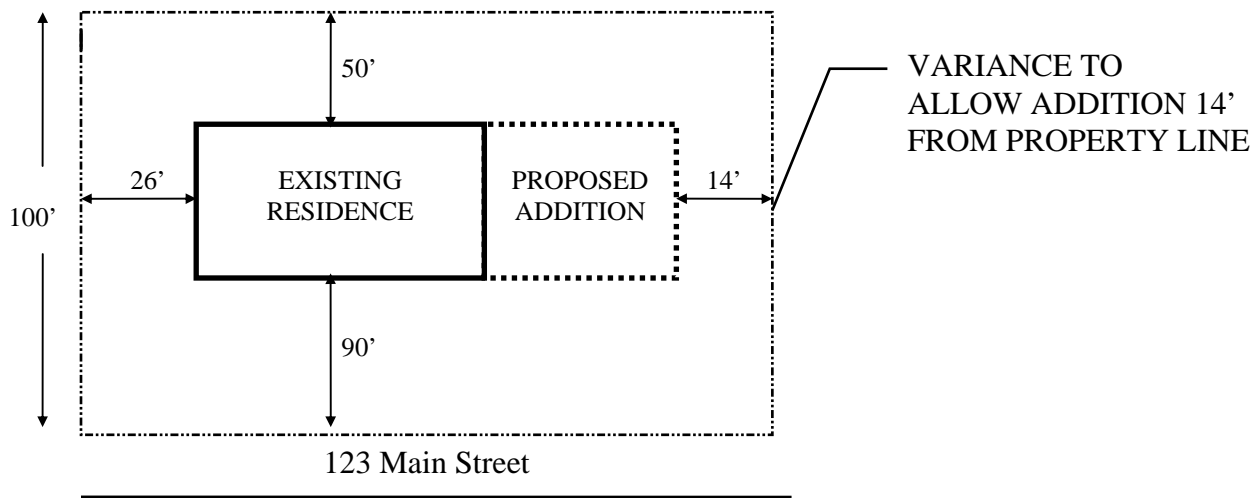
An individual has the right to file an appeal with the Fishkill Zoning Board of Appeals (ZBA) if a particular proposal fails to conform to the requirements of the Fishkill Zoning Ordinance. This process is available if a proposal does not conform to the dimensional or density requirements of the Zoning Ordinance due to unusual circumstances affecting the subject property. The appeal mechanism for seeking such relief is referred to as an "area variance". The ZBA is also empowered to authorize a use of a parcel which would otherwise not be allowed under zoning regulations. Such a request is referred to as a "use variance".

**In accordance with NYS General Municipal Law for Towns, section 239, the Dutchess County Department of Planning requires a mandated thirty (30) day review period of all Zoning Board of Appeals applications. The Zoning Board of Appeals is prohibited to act on any variance application without first receiving referral from the Dutchess County Department of Planning.**

### **1. How to complete the ZBA Application**

- A. Obtain a Zoning Board of Appeals (ZBA) application form from the Zoning Clerk at Town Hall, 807 Route 52, Fishkill. Complete the application including all necessary signatures. Lessees and/or optionees must secure owner's written authorization as provided on the application form.
- B. **All applications must be:** accompanied with a plot plan, drawn in ink, denoting property lines, all existing and proposed buildings and structures in relation to the property lines, paved or parking surfaces and appropriate measurements. Show location of water source or well, septic systems, streets, roads, driveway and any rights-of-way. Show adjacent properties. How far to the nearest buildings in all directions? What are they? If land is a vacant lot, you must describe how the ZBA members may find it. All construction, whether new, renovations to existing structures or additions must have professional drawings included.

Example of Plot Plan:



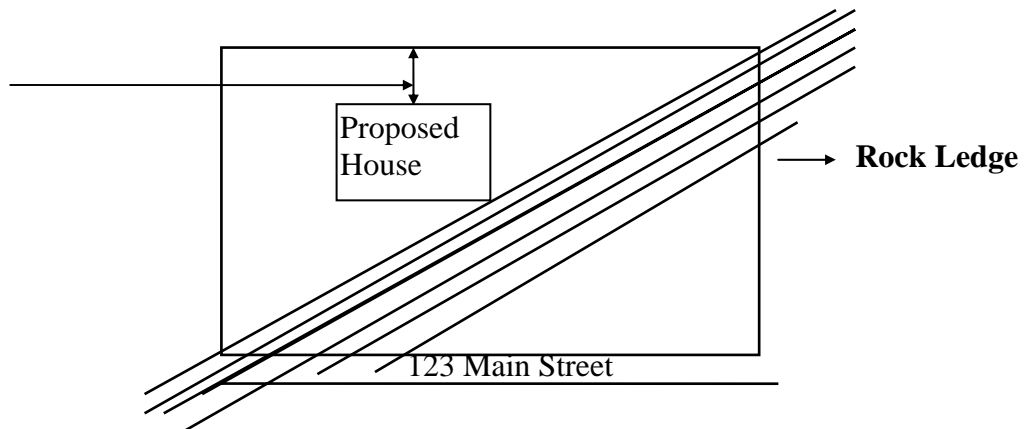
- C. Is property within 500 feet of any of the following?  
City of Beacon, Village of Fishkill, Town of Wappinger, I - 84, State or County Rd (Route 9, 52, DC-36, DC-34 etc...), State Park or other recreation area, Existing or proposed right-of-way of any stream, creek or river, Wetlands or wetland buffer zones (Additional copies of the application may be required)
- D. Any property within 500 ft of a state road must be reviewed by the NYS Department of Transportation. Any property within 500 ft of I-84 must be reviewed by the NYC Thruway Authority. Any Property within 500 ft of a county road must be reviewed by the DC Department of Public Works.
- E. Applications must include prescribed application and escrow fees payable to the Town of Fishkill to cover costs associated with legal notifications, advertising and administrative expenses to review your application.
- F. All applicants to the ZBA must reimburse the Town for any and all consultant review charges that directly relate to their application. The most frequent example of this is when the ZBA determines that the Town Engineer needs to visit the site. In such a case, the applicant shall pay the Engineer's fees. (See the current Town of Fishkill Fee Schedule).
- G. Submit 1 original and 12 copies of your completed application, denial or referral letter, plot or site plans showing the proposed addition and professional drawings, along with the application and escrow fees to the Town of Fishkill Zoning Clerk. Upon receipt of the application, your request will be reviewed for accuracy and scheduled for the next Public Hearing.
- H. Notification of the Public Hearing will be mailed approximately ten (10) days prior, confirming the time and location of the meeting. As a general rule, the Public Hearings are held at 7:00 P.M. on the **third Tuesday** of each month. You will be notified of any change in the original meeting date.

## 2. The Public Hearing

A. Attendance at the Zoning Board of Appeals Public Hearing by either yourself or your representative is mandatory. When your case is called, approach the podium, give your name and address for the record, and proceed to explain the nature of your request. When considering an area variance, the Zoning Board of Appeals will weigh the following conditions of law relative to a variance. Therefore, it is important that you explain how each condition applies to your case.

1. **Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting an area variance.**
2. **Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance.**
3. **Whether the area variance is substantial.**
4. **Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.**
5. **Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board, but shall not necessarily preclude the granting of the area variance.**

**Variance to permit encroachment into rear yard setback due to physical condition of the land**



B. Members of the public may speak either in support of, or in opposition to a variance appeal, once the petitioner has addressed the conditions of law. Both parties may offer rebuttal to previous testimony prior to concluding the case. Deliberations for each case occur at the Public Hearings. Each case will be voted on and a decision will be rendered within 62 days after the closing of the Public Hearing.

### 3. Additional Procedures - If You Are Dissatisfied With A Zoning Board Of Appeals Decision

- A. Any person aggrieved by any decision of the Zoning Board of Appeals may apply to the Supreme Court of the State of New York for relief by a proceeding under **Article 78** of the Civil Practice Law, as stated in section 267 of the Town Law. Such proceeding shall be instituted within thirty (30) days after filing the decision in the Town Clerk's office.

### **Zoning Board of Appeals Variance Application Requirements**

The 7<sup>th</sup> of the each month is the deadline for filing the application.

The following fees **must** be submitted with the application

1. \$250.00 residential application fee (or \$350.00 commercial fee)
2. \$500.00 escrow fee.
  - Note: Additional escrow fees may be required at any time during the variance process to reimburse expenses incurred relating to the application or Public Hearing.
3. If paying by check, a separate check is required for each fee.
4. Make all checks payable to **The Town of Fishkill**

Call to verify Public Hearing one (1) week prior.

#### **Application Deadlines \*\***

December 7, 2005

January 7, 2006

February 7, 2006

March 7, 2006

April 7, 2006

May 7, 2006

June 7, 2006

July 7, 2006

August 7, 2006

September 7, 2006

October 7, 2006

No meeting in December 2006

December 7, 2006

#### **Meeting Dates**

January 17, 2006

February 21, 2006

March 21, 2006

April 18, 2006

May 16, 2006

June 20, 2006

July 18, 2006

August 15, 2006

September 19, 2006

October 17, 2006

November 21, 2005

January 16, 2007

\*\* - If the 7<sup>th</sup> of the month falls on a Saturday or Sunday the deadline will be extended to the following Monday.